

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RUSSELL MENDEZ, an individual,)
and JOYCE MENDEZ, his wife,)
Plaintiffs,)
v.)Civil Action 04-258J
UNITED STATES OF AMERICA,)Judge Kim R. Gibson/
FEDERAL BUREAU OF PRISON,)Mag. Judge Amy Reynolds Hay
FEDERAL CORRECTIONS INSTITUTE-)
LORETTA, DANIEL LEONARD,)
SCOTT DECKER, SCOTT MIDDLEKAUF,)
JEFFREY TRIMBATH, MICHAEL)
CONDOR, JR., THE ALTOONA HOSPITAL,)
THOMAS GORE, ELIAS MOUNIF RIFKAH,)
ARTHUR DE MARSICO, HANY SHANOUDY)
Defendants.)Re: Docs. #32, 34, 36, 38,
) 43 & 57

AND NOW, this 26th day of September, 2005, after the plaintiffs, Russell Mendez and Joyce Mendez, filed an action in the above-captioned case, and after Motions to Dismiss were submitted by defendants, and after a Report and Recommendation was filed by the United States Magistrate Judge granting the parties ten days after being served with a copy to file written objections thereto, and no objections having been filed, and upon independent review of the motions and the record, and upon consideration of the Magistrate Judge's Report and Recommendation, which is adopted as the opinion of this Court,

IT IS ORDERED that the Federal Defendants' Partial Motion to Dismiss/for Summary Judgment is treated as a Motion to Dismiss and is granted, and the following defendants are dismissed from this action: the Bureau of Prisons, FCI-Loretto, Daniel Leonard, Scott Decker, Scott Middlekauf, Jeffrey Trimbath and Michael Condor, Jr.

IT IS FURTHER ORDERED that all FTCA claims are dismissed against all defendants except the United States, and the FTCA claim for failure to provide medical care during transport between facilities is dismissed as against the United States;

IT IS FURTHER ORDERED that Defendant Shanoudy's Supplemental Motion to Dismiss is granted in part and denied in part. It is granted as to any FTCA claim against him and as to any claim for attorney fees, but it is denied as to the state law claims of negligence and loss of consortium;

IT IS FURTHER ORDERED that Defendant DeMarsico's Motion to Dismiss is granted and all FTCA claims and attorney fees claims against him are dismissed;

IT IS FURTHER ORDERED that Defendant Altoona Hospital's and Thomas Gore's Joint Motion to Dismiss is granted and all FTCA claims and attorney fees claims against them are dismissed;

IT IS FURTHER ORDERED that Defendant Rifkah's Supplemental Motion to Dismiss is granted in part and denied in part. It is granted as to all FTCA claims and attorney fees claims, but denied as to any state law claims of negligence and loss of consortium;

IT IS FURTHER ORDERED that Defendant Rifkah's motion to dismiss is dismissed as moot.



KIM R. GIBSON
United States District Judge

cc: Honorable Amy Reynolds Hay
United States Magistrate Judge

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